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Synopsis

SUMMARY: This rule addresses 109 individual and class petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. In this rule, EPA is granting 58 exemption petitions; granting in part and denying in part one exemption petition; denying 49 exemption petitions; and dismissing one exemption petition.

Text

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0021.

I. Introduction

The proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486) addressed 172 pending individual and class exemption petitions. During the comment period on the proposed rule, 17 of the 172 exemption petitions were withdrawn or dismissed, and four new exemption petitions were accepted for consideration. Thus, 159 exemption petitions remain to be resolved. EPA is taking action on 109 exemption petitions in this final rule and deferring action on 50 exemption petitions. The 50 exemption petitions on which action is being deferred are addressed in a proposed rule related notice published elsewhere in this issue of the Federal Register.

II. Background

A. Statutory Authority

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than one year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10-750.21.

EPA's Interim Procedural Rules for PCB Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.30-750.41.

B. History of PCB Rulemaking

The history of PCB rulemaking is described in detail in the proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486). Since that proposed rule was published, EPA has issued two final rules that affect EPA's disposition of the pending exemption petitions.

Elsewhere in this issue of the Federal Register, the EPA issued a final rule which authorizes the following uses of PCBs indefinitely: (1) Use of small quantities of PCBs in research and development; (2) use as a mounting medium in microscopy; (3) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (4) use of small quantities of PCBs as an optical liquid. The new use authorizations are codified at 40 CFR 761.30 (j), (k), (n), and (o), respectively. In that rule EPA rejected a request by one commentator to authorize the use of PCBs as a precision calibration standard.

Second, EPA is issuing a rule published elsewhere in this issue of the Federal Register, which addresses the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. Among other things, that rule (the Uncontrolled PCB Rule) does the following: (1) Amends the PCB rule published in the Federal Register of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional processes from regulation; and (2) defers action on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs pending the submission of additional information by petitioners.

C. Effect of This Rule on Previous Policy Statements

In the Federal Register of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the Federal Register of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as the activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce).

Each petitioner who is granted an exemption in this rule will be allowed to engage in the activities for which exemption is granted for one year from the effective date of this rule. After the one-year exemption expires, the petitioner will not be allowed to engage in such activities, even if it renews its exemption request, until EPA acts on

that request. This limitation does not apply to a petitioner who is being granted an exemption to manufacture, process, distribute in commerce, or export small quantities of PCBs for research and development, for the reasons described in Units V.E. and V.I.1 of this preamble.

Each petitioner who is denied an exemption in this rule must, on the effective date of this rule, cease all activities for which exemption is denied. Of course, petitioners may file renewed exemption petitions that provide the necessary information indicated in this preamble to enable the Agency to find that the conditions of sections 6(e)(3)(B)(i) and 6(e)(3)(B)(ii) of TSCA are met. (For a discussion of these sections of TSCA, see Units III and IV of this preamble.)

EPA intends to continue its policy of requiring petitioners who file late exemption petitions to show good cause why EPA should accept the petition for consideration, as described in the notice published in the Federal Register of March 5, 1980 (45 FR 14247).

III. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. In this rule EPA is granting some exemption petitions to manufacture, process, and distribute in commerce PCBs and is denying others. EPA's unreasonable risk findings for each exemption petition are discussed in later units of this preamble.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denial.

These are the same factors that EPA must consider in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under sections 6(a) and 6(e) of TSCA.

A. Effects on Human and the Environment Health

In deciding whether to grant an exemption, EPA considered the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the Federal Register of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemptions Rule was published, EPA evaluated this information, plus new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on Health Effects of PCBs" (August 19, 1982). During the comment period on the proposed PCB Exemptions Rule, General Electric Co. and Westinghouse Electric Corp. presented additional information about the adverse health effects of PCBs. EPA evaluated this information, as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT").

1. Health Effects

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further

epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases, chloracne may occur in humans exposed to PCBs. Seven cases of chloracne are painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental Effects

Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

3. Risks

Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA has taken exposure into consideration when evaluating each exemption petition, and this is discussed in later units of this preamble.

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken the benefits and costs into consideration when evaluating each exemption petition. Because of the range of activities for which exemptions are requested, the specific benefits and costs are discussed in later units of this preamble.

IV. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considered the kind of exemption the petitioner is requesting, whether substitutes exist and are readily available, and whether the petitioner expended time and money to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCBs for PCBs or to

show why it did not seek to substitute non-PCBs for PCBs. EPA's evaluation of each petitioner's attempt to make good faith efforts is discussed in later units of this preamble.

V. Disposition of Exemption Petitions

A. Distribution in Commerce of PCB Small Capacitors for Purposes of Repair and Distribution in Commerce of PCB Equipment Containing PCB Small Capacitors

EPA received 20 petitions for exemption to distribute in commerce existing inventories of PCB small capacitors for purposes of repairing equipment such as air conditioners, microwave ovens, and office machines. EPA also received 21 petitions for exemption to distribute in commerce existing inventories of PCB equipment containing PCB small capacitors, including fluorescent light ballasts, light fixtures, small electric motors, computer assemblies, air conditioners, and office machines. During the comment period on the proposed rule, three of these 41 exemption petitions were withdrawn. EPA is acting on the 38 remaining exemption petitions. In 40 CFR 761.3(d)(1), EPA defines "PCB small capacitor" as "a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid." PCB small capacitors commonly contain between 0.1 and 0.6 lbs. of PCBs. In 40 CFR 761.30(1), EPA authorizes the use of PCB small capacitors indefinitely.

1. Petitions Granted

EPA is granting each of the 31 exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. PCBs are rarely released when PCB small capacitors and PCB equipment containing PCB small capacitors are distributed in commerce and used, because individual capacitors contain small quantities of PCB dielectric fluid; contain significant amounts of absorbent material such as paper; and are airtight. EPA concluded that the petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs contained in the capacitors and equipment, nor is release of PCBs to the environment likely.

One commentor on the proposed rule, SCA Chemical Services, Inc., stated that EPA should not grant an exemption to these petitioners because it would result in the unregulated disposal of a large quantity of PCBs, which would otherwise have to be disposed of in EPA-approved incinerators, resulting in potential harm to the environment. Although granting an exemption would allow approximately 720,000 lbs. of PCBs to be distributed in commerce, EPA believes that it will not result in an unreasonable risk of injury to health or the environment for the reasons described above. Furthermore, 40 CFR 761.60(b)(2) (ii) and (iv) permit a person to dispose of PCB small capacitors as municipal solid waste, unless that person manufactures or at any time manufactured PCB capacitors or PCB equipment and acquired the PCB capacitors in the course of such manufacturing. Many of the persons represented by these petitioners never manufactured PCB capacitors or PCB equipment. Accordingly, they would not be required to comply with any special disposal requirements if an exemption were denied and could simply dispose of the PCB small capacitors as municipal solid waste. EPA believes that the public health and environment are better protected by granting an exemption to distribute PCB small capacitors and PCB equipment as replacement parts, which will eventually be randomly disposed of by individual users in small amounts over time, than by denying the exemption petitions, which might concentrate PCBs in certain locations if one or more petitioners disposed of their PCB small capacitors and PCB equipment at once.

In addition, EPA estimated the total costs of denying all 38 of these exemption petitions to be at least $7.52 million. This estimate includes: (1) $4.61 million to replace all PCB small capacitors sold for purposes of repair; and (2) at least $2.91 million to dispose of ballasts, fluorescent light fixtures, and PCB small capacitors removed from other PCB equipment, and to replace such equipment with non-PCB equipment. The estimated costs would be even greater if the additional costs of identifying and removing PCB small capacitors that have already been processed into existing PCB equipment were included.

Finally, granting these exemptions will benefit society by allowing useable articles and equipment to be distributed in commerce and used.

b. Good faith efforts finding. EPA concluded that each of these petitioners made good faith efforts to substitute non-PCB capacitors for PCB small capacitors. Some petitioners began substituting non-PCB capacitors as early as 1977, and all petitioners stopped purchasing PCB small capacitors by July 1979 and now restock only with non-PCB capacitors. Each of these petitioners submitted information to show that it reduced the number of PCB items and the volume of PCBs in its inventory. Each of these petitioners who requested an exemption to distribute existing inventories of PCB equipment has redesigned and modified equipment to accommodate the non-PCB capacitors it now processes into equipment.

Therefore, EPA grants the following petitioners an exemption for one year to distribute in commerce PCB small capacitors for purposes of repair:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).

Air Conditioning Contractors of America, Washington, DC 20036 (PDE-7).

Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE-26.2)

B & B Motor & Control Corp., New York, NY 10012 (PDE-30).

Complete-Reading Electric Co., Hillside, IL 60162 (PDE-48).

Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

Harry Alter Co., Chicago, IL 60609 (PDE-111).

Minnesota Mining and Manufacturing Co., St., Paul, MN 55133 (PDE-157.1).

Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE-161).

National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

National Capacitor Corp., Garden Grove, CA 92641 (PDE-165).

Service Supply Co., Phoenix, AZ 85013 (PDE-237).

Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE-297).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

In addition, EPA grants the following petitioners an exemption for one year to distribute in commerce PCB equipment containing PCB small capacitors:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).

Coleman Co., Inc., Wichita, KS 67201 (PDE-45.1).

Donn Corp., Westlake, OH 44145 (PDE-63).

Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE-93).

Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).

GTE Products Corp., Danvers, MA 01923 (PDE-105).

King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE-139).

L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.3).

National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

Royalite Co., Flint, MI 48502 (PDE-231).

Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE-246).

Transco, Inc., West Columbia, SC 29169 (PDE-276.1).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

EPA reminds petitioners who manufacture or at any time manufactured PCB capacitors or PCB equipment that 40 CFR 761.60(b)(2)(iv)(A) requires them to dispose of PCB small capacitors in an EPA-approved incinerator when they dispose of PCB small capacitors or PCB equipment containing such capacitors.

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of PCBs before the exemption expires. Most of the petitioners have had since July 1979 to distribute their inventories of PCBs and providing an additinal year will make it possible for them to eliminate any PCBs that remain in stock. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Denied

EPA is denying each of the seven exemption petitions listed below. EPA specifically solicited the information described below in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs.

Aireco Supply, Inc., Arlington, VA 22202 (PDE-8), did not submit information describing the specific activities for which it seeks exemption, including a description of the PCB articles or equipment to be distributed in commerce; the length of time requested for exemption; the number of PCB articles or equipment to be distributed; the amount of PCBs to be distributed (by pound and/or volume); its basis for contending that granting an exemption would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made good faith efforts to substitute non-PCBs for PCBs; and the reasonably ascertainable economic consequences of denial.

Carrier Corp., Syracuse, NY 13221 (PDE-39, PDE-39.1, and PDE-39.2), did not submit information about the number of PCB small capacitors and pieces of PCB equipment to be distributed; the amount of PCBs to be distributed (by pound and/or volume) in the capacitors and equipment; and the reasonably ascertainable economic consequences of denial.

RIP, Inc., Fort Worth, TX 76112 (PDE-227), did not submit information about the number of PCB small capacitors to be distributed; the amount of PCBs to be distributed (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

Traco Industrial Corp., New York, NY 10027 (PDE-276), did not submit information to describe the size of capacitors it wants to distribute in commerce; the amount of PCBs to be distributed (by pound and/or volume); its basis for contending that granting an exemption would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made good faith efforts to substitute non-PCB capacitors for PCB small capacitors; and the reasonably ascertainable economic consequences of denial.

Trans-State Corp., Houston, TX 77036 (PDE-281), did not submit information about the amount of PCBs to be distributed in PCB small capacitors (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

3. Petitions Withdrawn

During the comment period on the proposed rule, EPA received notices withdrawing three exemption petitions to distribute in commerce PCB equipment containing PCB small capacitors from General Electric Co., Fairfield, CT 06431 (PDE-99), and from Raytheon Co., Lexington, MA 02173 (PDE-208 and PDE-209).

B. Processing PCB Articles and PCB Equipment Into Other Equipment and Distributing That Equipment in Commerce

EPA received 16 petitions for exemption to process existing inventories of PCB articles and PCB equipment into other equipment and to distribute that equipment in commerce. During the comment period on the proposed rule, 11 of these 16 exemption petitions were withdrawn. The five remaining exemption petitions are to process PCB small capacitors into ballasts, ballasts into fluorescent light fixtures, and small electric motors into equipment, and to distribute in commerce the finished PCB equipment.

1. Petitions Granted

EPA is granting each of the five exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. PCBs are rarely released when PCB small capacitors and PCB equipment containing PCB small capacitors are processed, distributed in commerce, and used, because individual capacitors contain small quantities of PCB dielectric fluid; contain significant amounts of absorbent material such as paper; and are airtight. EPA concluded that the petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs in the capacitors or equipment, nor is release of PCBs to the environment likely.

One commentor on the proposed rule, SCA Chemical Services, Inc., stated that EPA should not grant an exemption to these petitioners, because it would result in the unregulated disposal or a large quantity of PCBs, which would otherwise have to be disposed of in EPA-approved incinerators, resulting in potential harm to the environment. Although granting an exemption would allow approximately 191,000 lbs. of PCBs in small capacitors to be processed and distributed in commerce, EPA believes that such activities will not result in an unreasonable risk of injury to health or the environment because the petitioners, their customers, and the ultimate users are not likely to be exposed to PCBs, nor is release of PCBs to the environment likely.

In addition, EPA estimated the total costs of denying all five of these petitions to be at least $1.63 million. This estimate includes: (1) $214,000 to dispose of existing inventories of PCB small capacitors held for processing; and (2) 1.42 million to replace existing inventories of PCB small capacitors and other equipment containing PCB small capacitors. The estimated costs would be even greater if the costs of identifying and removing PCB small capacitors that have already been processed into existing PCB equipment were included.

Finally, granting an exemption will benefit society by allowing useable articles and equipment to be processed, distributed in commerce, and used.

b. Good faith efforts finding. EPA concluded that each of these petitioners made good faith efforts to develop PCB substitutes. Each of these petitioners submitted information to show that it reduced the number of PCB items and the volume of PCBs in its inventory. Furthermore, each of these petitioners submitted information to show that it has redesigned and modified equipment to accommodate non-PCB items.

Therefore, EPA grants the following petitioners an exemption for one year to process PCB small capacitors and PCB equipment containing PCB small capacitors into other equipment and to distribute in commerce that equipment:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).

Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).

GTE Products Corp., Danvers, MA 01923 (PDE-105).

L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

EPA reminds petitioners who manufacture or at any time manufactured PCB capacitors or PCB equipment that 40 CFR 761.60(b)(2)(iv)(A) requires them to dispose of PCB small capacitors in an EPA-approved incinerator when they dispose of PCB small capacitors or PCB equipment containing such capacitors. In addition, EPA reminds petitioners that since January 1, 1979, EPA has required all PCB equipment containing a PCB small capacitor to be marked at the time of manufacture with the statement "This equipment contains PCB Capacitors" (40 CFR 761.40(d)).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their inventories of PCBs before the exemption expires. Most of the petitioners have had since July 1979 to process and distribute their inventories of PCBs and providing an additional year will make it possible for them to eliminate any PCBs that remain in stock. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Withdrawn

During the comment period on the proposed rule, Raytheon Co., Lexington, MA 02173 (PDE-193, PDE-194, PDE-195, PDE-196, PDE-201, PDE-208, PDE-209, PDE-211, PDE-212, PDE-214, and PDE-215), withdrew all 11 of its petitions for exemption to process PCB articles and PCB equipment into other equipment and to distribute in commerce the finished PCB equipment.

C. Processing and Distributing in Commerce PCBs for Purposes of Servicing Customers' Transformers

EPA received 34 petitions for exemption to process and distribute in commerce PCBs for purposes of servicing customers' PCB transformers and PCB-contaminated transformers. During the comment period on the proposed rule, one of these 34 exemption petitions was withdrawn. Twenty-nine of the exemption petitions are renewed petitions for activities that were underway before July 1, 1979, and four of the exemption petitions are new petitions for activities that were not underway before that date. The 29 petitioners whose activities were underway before that date have been allowed to continue the activities for which they requested exemption pending this final rule, in accordance with the EPA policy described in Unit II.C of this preamble.

EPA defines a "PCB Transformer" in 40 CFR 761.3(y) as "any transformer that contains 500 ppm PCB or greater." EPA defines a "PCB-Contaminated Transformer" in 40 CFR 761.3(z) as "any transformer that contains 50 ppm or greater PCB but less than 500 ppm PCB." Some petitioners requested an exemption to introduce their own PCB fluid (i.e., fluid containing 500 ppm PCB or greater) into a customer's PCB transformer. Some petitioners requested an exemption to introduce their own PCB-contaminated fluid (i.e., fluid containing 50 ppm or greater PCB but less than 500 ppm PCB) into a customer's PCB transformer or PCB-contaminated transformer. Each of these petitioners needs an exemption to engage in such activities, because the activities constitute processing of PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3(bb), and distribution in commerce of PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the proposed rule, EPA described certain transformer servicing activities that do not require an exemption. A person does not need an exemption to remove PCB fluid or PCB-contaminated fluid from a customer's transformer and later return that fluid to the same transformer. Nor does a person need an exemption to introduce PCB fluid he already owns into his own PCB transformer or to introduce PCB-contaminated fluid he already owns into his own

PCB transformer or PCB-contaminated transformer. In the PCB Electrical Equipment Rule, published in the Federal Register of August 25, 1982 (47 FR 37342), EPA authorized these activities to continue without the need for an exemption, because there is no processing or distribution in commerce of PCBs. Finally, a person does not need an exemption to introduce non-PCB fluid (i.e., fluid containing less than 50 ppm PCB) to any transformer in servicing that transformer, and EPA strongly encourages that use of non-PCB fluid as a substitute for PCB fluid and PCB-contaminated fluid. The authorization to use and service PCB transformers and PCB-contaminated transformers is codified at 40 CFR 761.30(a).

During the comment period on the proposed rule, the Electrical Apparatus Service Association (EASA) asked whether an exemption is needed to service a customer's PCB-contaminated transformers by removing the fluid from one PCB-contaminated transformer and then returning that fluid to another PCB-contaminated transformer owned by the same customer. EASA stated that servicing companies sometimes remove PCB-contaminated fluid from several transformers owned by a customer, place that fluid in a batch storage tank, and then use that fluid to top off the customer's transformers after repairs have been made. EASA contended that no exemption should be required, even though the PCBs are not returned to the same transformer from which they were taken, since there would be no change of ownership of the PCBs and thus no distribution in commerce of PCBs. EPA agrees with this conclusion and will allow this activity to continue without the need for an exemption. EPA believes that this activity will not result in an unreasonable risk of injury to health or the environment and that it is consistent with previous explanations of when an exemption is needed. EPA advises servicing companies to take all precautions necessary to ensure that PCB-contaminated fluid removed from a customer's PCB-contaminated transformer is returned only to a PCB-contaminated transformer owned by the same customer. Removing PCB-contaminated fluid from a customer's PCB-contaminated transformer and then returning that fluid to a transformer owned by another customer still requires an exemption.

EPA originally proposed to deny all 34 of these exemption petitions, because the petitioners did not submit adequate information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, based on the limited information submitted, EPA determined that the total costs of denial would be small (approximately $20,000 to $35,000) and that the costs of denial for each of the 334 companies represented by petitioners would be less than $90 per company for denying petitions to process and distribute in commerce PCB fluid and less than $20 per company for denying petitions to process and distribute in commerce PCB-contaminated fluid.

Since the petitioners did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not need to consider whether petitioners made good faith efforts to substitute non-PCBs for PCBs, as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period on the proposed rule, EPA received comments from the following petitioners:

The Electrical Apparatus Service Association (EASA), representing 265 small companies, commented that EPA should grant its members an exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) EASA members would be able to service many small utilities' transformers, thereby helping to provide efficient and reliable electrical service throughout the United States; (2) denying an exemption would cost EASA members some portion of an estimated $9.9 million to $19.9 million (an average of $37,500 to $75,000 per company) to dispose of and replace the 2.8 million to 5.7 million gallons of PCB-contaminated fluid handled in servicing 432,000 PCB-contaminated transformers each year; (3) the amount of PCBs involved (1,127 lbs. of PCBs) is a tiny percentage of the total amount of PCBs in circulation in PCB-contaminated transformers (262,000 lbs. of PCBs); and (4) granting a one year exemption would give EASA members the time they need to phase out their PCB-related activities that require exemption.

General Electric Co. (GE) commented that EPA should grant it an exemption to process and distribute in commerce both PCB fluid and PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) The

health and environmental risks of PCBs are less than EPA originally concluded; (2) the additional risk of exposure to PCBs is small due to the small quantities of PCBs available for servicing transformers; and (3) GE had reduced its inventory of PCB fluid to be processed and distributed in commerce in servicing customers' PCB transformers from 4,000 gallons to 2,517 gallons and uses non-PCB fluid for topping off PCB transformers whenever feasible.

Westinghouse Electric Corp. commented that EPA should grant it an exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) The health and environmental risks of PCBs are less than EPA originally concluded; (2) granting an exemption would allow Westinghouse to use bulk storage tanks instead of drums in handling PCBs, thereby reducing the likelihood of exposure to PCBs; and (3) denying an exemption would cost it approximately $1.1 million to $2.3 million to dispose of and replace the 500,000 gallons of PCB-contaminated fluid it handles in servicing 1,500 PCB-contaminated transformers each year.

As a result of the comments received on the proposed rule, EPA has updated its estimated costs of denial. EPA estimates the costs of denying all of these petitions to process and distribute in commerce both PCB fluid and PCB-contaminated fluid to be slightly more than $12.5 million, including $9.9 million for EASA and $2.6 million for other petitioners. Most of this cost results from denying the petitions to service customers' PCB-contaminated transformers using PCB-contaminated fluid ($12,517,000); the costs of denying the petitions to service customers' PCB transformers using PCB fluid is estimated to be only $17,400 to $29,000.

1. Petitions Granted

EPA is granting an exemption to the members of the Electrical Apparatus Service Association (EASA, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc., for the following reasons:

a. Unreasonable risk finding. EPA concluded that EASA has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA agrees that the amount of PCBs to be processed and distributed in commerce in servicing customers' transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service customers' transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment. EPA also determined that granting an exemption will avoid costs of $9.9 million ($37,500 per company). Finally, granting an exemption will benefit society by helping small utilities continue to provide efficient and reliable electrical service throughout the United States.

b. Good faith efforts finding. EPA concluded that EASA made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EASA has attempted, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations. Although EASA has tried to keep its members well informed, EASA's comments on the proposed rule showed that EPA needed to provide further clarification about when an exemption is required. Granting a one-year exemption will give EASA the time it needs to inform its members of what they must do to comply with the PCB regulations and will allow EASA members time to phase out their PCB-related activities that require exemption.

Therefore, EPA grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid for purposes of servicing customers' transformers:

Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

Ohio Transformer Corp., Louisville, OH 44641 (PDE-173) (a member of EASA that also petitioned individually).

T & R Electric Supply Co., Inc., Colman, SD 57017 (PDE-265) (a member of EASA that also petitioned individually).

Temco, Inc., Corpus Christi, TX 78410 (PDE-268) (a member of EASA that also petitioned individually).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to

eliminate their remaining inventories of PCBs before the exemption expires. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Denied

EPA is denying the exemption petition of General Electric Co., Fairfield, CT 06431 (PDE-99), because it did not meet the statutory requirements of section 6(e)(3)(B) of TSCA. First, GE did not show that granting an exemption to process or distribute in commerce PCBs in servicing customers' transformers would not result in an unreasonable risk of injury to health or the environment. GE's submission of information about the health effects of PCBs has not changed EPA's conclusion that PCBs have adverse health effects, as discussed in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). EPA specifically solicited information about the issues of unreasonable risk of injury to health or the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to GE. GE did not estimate the volume of PCB fluid or PCB-contaminated fluid that it would process or distribute in commerce during a one-year exemption. GE's estimated inventory of 2,517 gallons of PCB fluid is a misleading figure, since it does not reflect how many gallons GE would process and distribute in commerce in servicing customers' transformers during the course of a year. In fact, the quantity may be quite large, since an exemption would allow GE to reuse all PCB fluid and PCB-contaminated fluid that it reclaimed in its servicing operations. In addition, GE did not estimate the reasonably ascertainable economic consequences of denial. In sum, EPA could not balance the costs and benefits of granting an exemption and could not conclude that granting an exemption would not result in an unreasonable risk of injury.

Second, GE did not show that it made good faith efforts to substitute non-PCBs for PCBs, at least with respect to its petition for exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' PCB-contaminated transformers. The information GE submitted about reducing its inventory of PCB fluid and using non-PCB fluid in servicing customers' PCB transformers may show that it made good faith efforts with respect to servicing customers' PCB transformers. However, such information does not show that it made good faith efforts to substitute non-PCBs for PCB-contaminated fluid in servicing customers' PCB-contaminated transformers. Accordingly, EPA is denying GE's exemption petition to process and distribute in commerce PCB fluid and PCB-contaminated fluid in servicing customers' transformers.

EPA is denying the exemption petition of Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298), because it did not meet the statutory requirements of section 6(e)(3)(B) of TSCA. Westinghouse submitted adequate information about the volume of PCB-contaminated fluid to be processed and distributed in commerce and the estimated costs of denial for EPA to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment, as required by section 6(e)(3)(B)(i) of TSCA. However, Westinghouse submitted no information to show that it made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid, as required by section 6(e)(3)(B)(ii) of TSCA. In the absence of such information, EPA cannot conclude that Westinghouse made good faith efforts to substitute non-PCBs for PCBs. Accordingly, EPA is denying Westinghouse's exemption petition to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers.

EPA is denying each of the 28 exemption petitions listed below. EPA specifically solicited information about the issues of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Therefore, EPA denies the following 28 petitions for exemption to process and distribute in commerce PCB fluid and PCB-contaminated fluid for purposes of servicing customers' transformers:

Ace Transformer Service Co., Inc., Livonia, MI 48154 (PDE-3).

American Electric Corp., Jacksonville, FL 32205 (PDE-18).

American Environmental Energy Corp., Jacksonville, FL 32202 (PDE-18.1).

American Environmental Protection Corp., Jacksonville, FL 32205 (PDE-18.2).

Davis and Associates, Corpus Christi, TX 78413 (PDE-59).

Eastern Electric Corp., Jacksonville, FL 32205 (PDE-73).

Electrical Installation & Service Corp., Rio Piedres, PR 00928 (PDE-166.3).

Electro Test, Inc., San Ramon, CA 94583 (PDE-166.2).

Environmental Cleaning Specialists, Inc., Kingston, PA 18704 (PDE-84.1).

High Voltage Maintenance Corp., Mentor, OH 44060 (PDE-115).

Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE-128).

Jerry's Electric, Inc., Colman, SD 57017 (PDE-133).

Niagara Transformer Corp., Buffalo, NY 14225 (PDE-169.1).

National Electrical Testing Association, Inc., Dayton, OH 45429 (PDE-166).

Northeast Electrical Testing, Inc., Wallingford, CT 06492 (PDE-166.1).

Northern Electrical Testing, Inc., Troy, MI 48098 (PDE-170.1).

Recovery Specialists, Inc., Saline, MI 48176 (PDE-221).

Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE-247).

Sunohio, Canton, OH 44707 (PDE-264).

Texas Power & Light Co., Dallas, TX 75266 (PDE-271).

Three-C Electric Testing Co., Ashland, MA 01721 (PDE-275).

Transformer Inspection Retrofill Corp., Royal Oak, MI 48073 (PDE-278).

Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE-108).

Transformer Service, Inc., Concord, NH 03301 (PDE-280.1).

Transformer Service, Inc., Akron, OH 44039 (PDE-280).

U.S. Transformer Co., Jordan, MN 55352 (PDE-289).

3. Petition Withdrawn

During the comment period on the proposed rule, Transformer Consultants, Division of S.D. Myers, Inc., Akron, OH 44310 (PDE-277), withdrew its petition for an exemption to process and distribute in commerce PCBs for purposes of servicing customers' transformers.

4. Petition Dismissed

EPA is dismissing the exemption petition of Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), to process and distribute in commerce only non-PCB fluid for purposes of servicing customers' transformers. Ward Transformer does not need an exemption to engage in this activity. During the comment period, Ward Transformer

also requested an exemption to "detoxify PCB-contaminated mineral oil by use of an EPA approved treatment method." EPA is not addressing the request in this rulemaking, since the request should be considered and decided by the appropriate EPA Regional Office, in accordance with 40 CFR 761.60(e). In fact, Ward Transformer stated that it plans to submit a request to EPA's Region IV for a permit to engage in such an activity. In this rulemaking, EPA expresses no views on the merits of this request. During the comment period, Ward Transformer also requested an exemption to "service PCB railroad transformers consistent with 40 CFR 761.30(b)(2)." EPA hereby notifies Ward Transformer that it is permitted to service PCB railroad transformers without the need for an exemption, as long as it complies with all the requirements of 40 CFR 761.30(b)(2).

D. Processing and Distributing in Commerce PCBs in Buying and Selling Used Transformers

EPA received 12 petitions for exemption to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. All 12 exemption petitions are renewed petitions for activities that were underway before July 1, 1979. The petitioners have been allowed to continue the activities for which they requested exemption pending this final rule, in accordance with the EPA policy described in Unit II.C of this preamble.

The petitioners are engaged in one or more of the following activities for which an exemption is required: (1) Buying and selling used PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; (2) buying used PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v); and (3) buying used PCB transformers or PCB-contaminated transformers, introducing PCB fluid or PCB-contaminated fluid into these transformers (including fluid originally removed from and returned to the same transformer), and then selling them. The petitioners who introduce PCBs into these transformers need an exemption, because they are processing PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3(bb). The petitioners who sell these transformers need an exemption, because they are distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the proposed rule, EPA described certain activities that do not require an exemption. Section 6(e)(3)(C) of TSCA and 40 CFR 761.20(c)(1) allow a person to distribute in commerce used PCB transformers and PCB-contaminated transformers without the need for an exemption, provided that the following conditions are met: (1) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale; (2) the transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce; (3) no PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer); and (4) the transformer is distributed in commerce only within the United States. Unless each of the four conditions described above is met, a person must petition for and obtain an exemption from EPA before processing or distributing in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers.

EPA originally proposed to deny all 12 of these exemption petitions, because the petitioners did not show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, EPA determined that the costs of denying these petitions would be small. Based on the limited information submitted by the petitioners, EPA estimated the incremental costs of denial to be $90 to $240 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer, assuming all the transformer fluid had to be replaced and disposed of in both cases. EPA recognized that the additional costs resulting from denial might render a portion of petitioners' buying and selling activity unprofitable, but concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption.

Since the petitioners did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not need to consider whether petitioners made good faith efforts to substitute non-PCBs for PCBs, as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period on the proposed rule, EPA received comments from the following petitioners:

The Electrical Apparatus Service Association (EASA), representing 265 small companies, commented that EPA should grant its members an exemption to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers for the following reasons: (1) EASA members would be able to replace a customer's burned-out transformer in days instead of months, thereby helping small utilities and industrial companies provide efficient and reliable electrical service throughout the United States; (2) denying and exemption would cost EASA members some portion of an estimated $9.9 million to $19.9 million (an average of $37,500 to $75,000 per company) to dispose of and replace PCB-contaminated fluid that could otherwise be reused in buying and selling transformers; (3) the amount of PCBs involved (1,127 lbs. of PCBs) is a tiny percentage of the total amount of PCBs in circulation in PCB-contaminated transformers (262,000 lbs. of PCBs); and (4) granting a one year exemption would give EASA members the time they need to phase out their PCB-related activities that require exemption. During the public hearing on the proposed rule, EPA asked EASA why a company does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, EASA explained that it is not technically feasible for companies to reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them, because it does not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages. In addition, Ward Transformer stated that it would be prohibitively expensive to do so (an estimated $100,000 per transformer in electricity costs alone).

As a result of the comments received on the proposed rule, EPA has updated its estimated costs of denial. EPA now estimates the incremental costs of denial to be at most $160 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer, assuming all of the transformer fluid had to be replaced and disposed of in both cases. Given that the costs of replacing the similar sized PCB-contaminated transformer is approximately $1,600, and the costs of replacing a similar sized PCB transformer is approximately $13,000, the incremental costs amount to about 10 to 30 percent of replacement costs. Therefore, depending on the purchase price and resale value of used transformers, the additional costs resulting from denial might render a portion of this buying and selling activity unprofitable.

1. Petitions Granted

EPA is granting an exemption to the members of the Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-78), except for Ward Transformer Co., Inc., for the following reasons:

a. Unreasonable risk finding. EPA concluded that EASA has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA agrees that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment. EPA also determined that granting an exemption will avoid some costs to petitioners, although those costs have not been quantified. Finally, granting an exemption will benefit society by allowing small utilities and industrial companies to replace burned-out transformers quickly, which will help provide efficient and reliable electrical service throughout the United States.

b. Good faith efforts finding. EPA concluded that EASA made good faith efforts to substitute non-PCBs for PCBs. EPA understands the technical and economic difficulties associated with reclassifying PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v). Moreover, EASA has described its attempts, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations. Although EASA has tried to keep its members well informed, EASA's comments on the proposed rule showed that EPA needed to provide further clarification about when an exemption is required. Granting a one-year exemption will give EASA the time it needs to inform its members of what they must do to comply with the PCB regulations and will allow EASA members time to phase out their PCB-related activities that require exemption.

Therefore, EPA grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluids in buying and selling PCB-contaminated transformers:

Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-78), except for Ward Transformer, Co., Inc.

Ohio Transformer Corp., Louisville, OH 44641 (PDE-173) (a member of EASA that also petitioned individually).

Temco, Inc., Corpus Christi, TX 78410 (PDE-268) (a member of EASA that also petitioned individually).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of PCBs before the exemption expires. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. *Petitions Denied*

EPA is denying each of the eight exemption petitions listed below. EPA specifically solicited information about the issues of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Therefore, EPA denies the following eight petitions for exemption to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers;

Davis and Associates, Corpus Christi, TX 78413 (PDE-59).

Electro Test, Inc., San Ramon, CA 94583 (PDE-166.2).

G&S Motor Equipment Co., Kearny, NJ 07032 (PDE-94).

Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE-128).

Jerry's Electric, Inc., Colman, SD 57017 (PDE-133).

Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE-247).

Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE-108).

U.S. Transformer, Inc., Jordan, MN 55352 (PDE-289).

3. *Petition Deferred*

EPA is deferring final action on the exemption petition of Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers, in order to gather more information on the issue of unreasonable risk of injury. The reasons for that decision are discussed in a new proposed PCB Exemptions Rule published elsewhere in this issue of the Federal Register.

E. Research and Development

EPA received four exemption petitions to manufacture small quantities of PCBs for research and development and seven exemption petitions to process and distribute in commerce small quantities of PCBs for research and development. During the comment period on the proposed rule, one of these 11 exemption petitions was withdrawn. Four other petitions for exemption to export PCBs for research and development are discussed separately in Unit V.I of this preamble.

In 40 CFR 761.3(ee), EPA defines "Small Quantities for Research and Development" as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product." The petitioners intend to manufacture, process, and distribute in commerce PCBs for use in health and environmental research, including research in the following areas: to analyze and monitor PCBs in the air, soil, rivers, and sediments; to conduct bioassay and toxicology studies; and to produce reference standards for identifying PCBs using gas chromatography.

Elsewhere in this issue of the Federal Register, the EPA issued a final rule which allows the use of small quantities of PCBs for research and development indefinitely. This new use authorization is codified at 40 CFR 761.30(j). EPA concluded that authorizing this use of PCBs indefinitely does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

1. Petitions Granted

EPA is granting each of the eight exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. Most of these petitioners want to manufacture, process, or distribute in commerce less than one kilogram (kg) of PCBs, and only one petitioner requested an exemption to distribute in commerce as much as five kg of PCBs. The PCBs are manufactured and processed using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The PCBs are packaged and distributed in commerce in hermetically sealed containers no larger than 5.0 milliliters (ml), which minimizes human and environmental exposure to PCBs during storage and shipment. Once these petitioners have distributed the PCBs, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in most applications, by the viscosity of the PCBs, by the careful handling procedures typical of laboratory work, and by the fact that containers must bear the PCB warning label. In addition, granting an exemption will avoid some costs to petitioners. Finally, granting an exemption will benefit society by allowing important health, environmental, and analytical research to continue.

b. Good faith efforts finding. EPA concluded that the good faith efforts finding is not relevant here, because there are no substitutes for pure PCBs for health and environmental research. Pure PCBs are needed for this research, because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

Therefore, EPA grants the following petitioners an exemption for one year to manufacture small quantities of PCBs for research and development:

California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

Foxboro Co., North Haven, CT 06473 (ME-6).

ULTRA Scientific, Inc., Hope, RI 02831 (ME-99.1).

In addition, EPA grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for research and development:

California Bionuclear Corp., Sun Valley, CA 91352 (PDE-38.1).

Chem Service, Inc., West Chester, PA 19380 (PDE-41).

Foxboro Co., North Haven, CT 06473 (PDE-21.1).

PolyScience Corp., Niles, IL 60648 (PDE-178).

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

In this rulemaking and in the recent rulemaking to authorize the use of small quantities of PCBs for research and development indefinitely, EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for an exemption to manufacture, process, and distribute in commerce small quantities of PCBs for research and development. Furthermore, EPA determined that the manufacture, processing, distribution in commerce, and use of small quantities of PCBs for research and development will not present an unreasonable risk of injury to health or the environment, because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

In general, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to these petitioners, who will manufacture, process, and distribute in commerce small quantities of PCBs for research and development, since there are no substitutes for PCBs for the continuation of important research activities. In fact, PCBs will always be needed to ensure that the goal of section 6(e) of TSCA is being met. When the one-year exemption granted to these petitioners in this rule expires, EPA will automatically renew the exemption unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, processed, or distributed in commerce or any change in the manner of manufacture, processing, or distribution in commerce of PCBs. Any change in those factors might affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue in the activities for which it requests exemption.

2. Petitions denied

EPA is denying the exemption petitions of Pathfinder Laboratories, Inc., St. Louis, MO 63141 (ME-76 and PDE-174.1). EPA proposed to deny Pathfinder's petitions, because the petitioner did not submit information about the amount of PCBs to be manufactured, processed, and distributed in commerce (by pound and/or volume); the size of the containers in which the PCBs are packaged for distribution in commerce; how the containers are sealed; and the reasonably ascertainable economic consequences of denial. Although EPA specifically solicited such information in the proposed rule mailed to Pathfinder, the petitioner did not respond. Thus, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioner made good faith efforts to substitute non-PCBs for PCBs.

3. Petition Withdrawn

During the comment period on the proposed rule, General Electric Co., Fairfield, CT 06431 (PDE-99), withdrew its petition for exemption to process and distribute in commerce small quantities of PCBs for research and development.

F. Microscopy

EPA received two petitions to process and distribute in commerce PCBs for use in microscopy. McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., requested an exemption to process and distribute in commence PCBs for use as a mounting medium in microscopy. R.P. Cargille Laboratories, Inc., requested an exemption to process and distribute in commerce PCBs for the following: (1) Use as a mounting medium in microscopy; (2) use as a microscope immersion liquid; and (3) use as a precision calibration standard.

EPA proposed to grant a one year exemption to both petitioners to process and distribute in commerce PCBs for use as a mounting medium in microscopy, but only for use in art and historic conservation. EPA concluded that granting a limited exemption would not present an unreasonable risk of injury to health or the environment. Each of

the petitioners would process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protective equipment. Once the petitioners had distributed the PCBs, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of museum laboratory work. In addition, EPA concluded that granting a limited exemption would benefit society by allowing specialized microsocopy work in art and historic conservation to continue.

EPA proposed to limit the exemption to use in art and historic conservation, because it determined that the only essential use of PCBs was for permanently mounting sample particles of rare art and historic works. EPA determined that other uses of PCBs as a mounting medium in microscopy was a matter of convenience, not necessity. That is, persons would prefer to use PCBs to prepare a permanent slide than to use a non-PCB mounting medium, which would last approximately ten years.

EPA also proposed to deny Cargille's request for exemption to process and distribute in commerce PCBs for use as a microscope immersion liquid and for use as a precision calibration standard. Cargille did not show that granting an exemption would not result in an unreasonable risk; nor did it show that it made good faith efforts to substitute non-PCBs for PCBs. Furthermore, neither of these uses were authorized by EPA, and thus no one could legally use PCBs for these purposes. EPA concluded that it would be inappropriate to grant an exemption to process and distribute in commerce PCBs for uses that are not permitted.

The proposed actions of these exemptions petitions paralleled the proposed rule published in the Federal Register of November 17, 1983 (48 FR 52402). EPA proposed to renew indefinitely the authorization for using PCBs in microscopy, which would have expired on July 1, 1984, but only for use as a mounting medium in microscopy in art and historic conservation. As a result of comments received on the proposed use authorization rule, EPA issued a final rule appearing elsewhere in this issue of the Federal Register authorizing the following uses of PCBs indefinitely: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use of small quantities of PCBs as an optical liquid. The new use authorizations are codified at 40 CFR 761.30 (k), (n), and (o), respectively. EPA concluded that authorizing these uses indefinitely does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options. In that final rule, EPA also decided not to authorize the use of PCBs as a precision calibration standard, because of the availability of adequate substitutes for PCBs for this use.

During the comment period on the proposed PCB Exemptions Rule, EPA received the following comments:

McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., commented that EPA should grant it an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, not just in art and historic conservation. The commentor described its need for an exemption to provide PCBs, which would be used by forensic scientists to study crime scene trace evidence and by manufacturers to preserve product samples for potential product liability claims.

McCrone Research Institute commented that EPA should grant an exemption to its sister organization, McCrone Accessories & Components, to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, not just in art and historic conservation. The commentor described how PCBs are needed to preserve small particles on permanent slides for many important uses, including the study of particles from air and water pollution, atmospheric dust, integrated circuits, mineralogy, biology and medicine, contamination analysis, pharmacognosy, and crime scene trace evidence. The commentor argued in favor of expanding the exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, so that McCrone Components & Accessories could process and distribute in commerce standard reference slides of hairs, fibers, pigments, minerals, and other materials. The commentor noted that using PCBs for mounting such slides is advantageous to all microscopists engaged in particle identification, since PCBs allow the particles to remain unchanged for as many years as they are preserved, while other mounting media do not have

such long-term stability. Moreover, the commentor stated that limiting an exemption to process and distribute in commerce PCBs for use only in art and historic conservation would result in serious economic consequences to microscopists. The commentor noted that its six-volume particle atlas, which contains pictures of small particles mounted with PCBs, would become useless to the more than 5,000 laboratories which have spent more than $2 million to obtain it. Microscopists would not be able to prepare permanent slides for small particles, nor would they be able to use McCrone's particle atlas or reference slides for rapid particle identification. The commentor contended that these costs are great compared to the small volume of PCBs involved, almost all of which is encapsulated inthe slides. Finally, the commentor stated that EPA's suggestion of having microscopists remount slides every ten years was unrealistic, since microscopists would not do so and rapid identification by light microscopy would become impossible.

R.P. Cargille Laboratories, Inc., commented that EPA's proposal to grant an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy only in art and historic conservation is too limited. Cargille stated that EPA should grant it an exemption to process and distribute in commerce PCBs for the following four uses: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy; (3) use as an optical liquid in scientific experimentation; and (4) use as a precision calibration standard. Cargille estimated that it would process and distribute in commerce between 25 and 200 gallons of PCBs for these uses in the one year exemption period. Cargille described the uses other than as a mounting medium in microscopy as follows:

(1) Use as an immersion oil in low fluorescence microscopy -- PCBs are used in medical research, where the immersion oil must not fluoresce, and where other immersion oils are not adequate. Each use would require approximately 0.01 cubic centimeters (cc).

(2) Use as an optical liquid in scientific experimentation -- The primary use would be in applications requiring environmental stability, laser light transmission, and radiation "hardness." Other uses include space and communications applications needing optical stability to protect millions of dollars of experiments, equipment, or uninterruptible information transmission. Each use would require between 0.02 cc and 4 liters.

(3) Use as a precision calibration standard -- PCBs would be used to calibrate refractometers and other optical analytical instruments. Each use would require approximately 0.01 cc.

Cargille stated that it has been developed, processing, and distributing in commerce substitutes for PCBs and has reduced PCB usage in microscopy by 97 percent. Cargille contended that no substitutes are available for the remaining scientific and technical uses discussed above. PCBs contribute to temperature stability and range; withstand ultraviolet light, X-rays, and radiation exposure; and provide high refractive index and low dispersion. Cargille stated that denying the exemption would cost the government and private industry millions of dollars to find adequate substitutes to solve problems that could be handled by small amounts of PCBs.

1. Petition Granted

EPA is granting an exemption to McCrone Accessories & Components to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting McCrone an exemption would not result in an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

McCrone would process PCB in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protective equipment. Once McCrone had distributed the PCBs, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

b. Good faith efforts finding. EPA was persuaded that at this time there are no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence.

Therefore, EPA grants McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., Chicago, IL 60616 (PDE-149), an exemption for one year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes.

2. Petition Granted in Part and Denied in Part

EPA is granting that portion of R.P. Cargille Laboratories' petition for exemption to process and distribute in commerce PCBs for the following uses: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use of small quantities of PCBs as an optical liquid. EPA is granting an exemption for these uses for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

Cargille would process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protection equipment. Once Cargille had distributed the PCBs, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

b. Good faith efforts finding. EPA concluded that Cargille made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. EPA was persuaded that, in some circumstances, there are no adequate substitutes for PCBs at this time. For example, EPA has determined that there are no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence; in low fluorescence medical research (other than capillary microscopy); and in space, communications, and defense-related projects that require specialized optical liquids.

During the public hearing on the proposed rule, Cargille stated that it would abide by the conditions contained in a consent order, which it was voluntarily entering into with EPA to settle an EPA action for alleged violations of the PCB regulations. In that consent order, Cargille agreed to store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

Therefore, EPA grants R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), an exemption for one year to: (1) Process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) process and distribute in commerce small quantities of PCBs for use as an optical liquid. The exemption is granted on the condition that Cargille stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

EPA is denying that portion of Cargille's petition for exemption to process and distribute in commerce PCBs for use as a precision calibration standard. Cargille submitted no information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment, nor did it show that it made good faith efforts to substitute non-PCBs for PCBs. EPA concluded that adequate non-PCB substitutes do exist for this use. In fact, elsewhere in this issue of the Federal Register the EPA rejected a use authorization for this purpose.

Since no one could legally use PCBs as a precision calibration standard, EPA has concluded that it would be inappropriate to grant an exemption to process and distribute in commerce PCBs for this purpose.

G. Distribution in Commerce of Previously Imported and Repaired PCB Equipment

EPA received one exemption petition to distribute in commerce previously imported and repaired PCB equipment.

Honeywell, Inc., Waltham, MA 02154 (ME-51 and PDE-119), requested an exemption to: (1) Import PCB equipment (i.e., computer assemblies and subassemblies containing PCB small capacitors) for purposes of repair, resale, and disposal; (2) distribute in commerce the previously imported and repaired PCB equipment; and (3) export previously imported and repaired PCB equipment. Honeywell's petition for exemption to import PCB equipment is discussed in Unit V.H.2 of this preamble, and its petition for exemption to export previously imported and repaired PCB equipment is discussed in Unit V.I.2 of this preamble.

When a computer assembly or subassembly fails in service overseas, Honeywell ships a replacement part and imports the failed equipment for repair at its service facilities in the United States. Honeywell states that it discovers whether failed equipment contains PCB small capacitors only after the equipment has been imported, opened, and inspected. If a piece of equipment contains a defective PCB small capacitor, Honeywell removes and disposes of it in an EPA-approved incinerator and replaces it with a non-PCB capacitor. Honeywell estimated that it removes and disposes of five to 40 PCB small capacitors annually. However, if a PCB small capacitor is functional, as it usually is, Honeywell does not remove it. Rather, Honeywell repairs the equipment and places it back in stock for distribution within the United States and for export, as the need arises.

Honeywell stated that in 1981 it imported for repair 1,105 pieces of equipment, which are known to have contained, or are suspected of containing, PCB small capacitors. In addition, Honeywell stated that at the end of 1982 it had in stock 1,620 repaired pieces of equipment, which are known to have contained PCB small capacitors when manufactured. Honeywell was unable to estimate how many of these pieces of equipment still contain PCB small capacitors.

EPA is granting Honeywell an exemption to distribute in commerce its existing inventory of previously imported and repaired PCB equipment containing PCB small capacitors. First, EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment, because the PCB equipment contains only intact, nonleaking PCB small capacitors. Honeywell is in the same situation as the other petitioners who requested an exemption to distribute their existing inventories of PCB equipment containing PCB small capacitors. EPA is granting an exemption to those petitioners for the reasons discussed under Unit V.A of this preamble. Second, EPA concluded that Honeywell made good faith efforts to find substitutes for these PCBs, since it stopped purchasing PCB small capacitors prior to 1979 and disposed of its inventory of PCB small capacitors held for purposes of repair in October 1982. The factors that support these conclusions are discussed more fully in Unit V.A of this preamble.

Therefore, EPA grants Honeywell, Inc., Waltham, MA 02154 (PDE-119), an exemption for one year to distribute in commerce previously imported and repaired PCB equipment containing PCB small capacitors.

EPA reminds Honeywell that 40 CFR 761.60(b)(2)(iv)(A) requires it to dispose of PCB small capacitors in an EPA-approved incinerator when it disposes of PCB small capacitors or PCB equipment, if Honeywell at any time manufactured PCB capacitors or PCB equipment containing such capacitors. In addition, EPA reminds Honeywell that since January 1, 1979, EPA has required all PCB equipment containing a PCB small capacitor to be marked at the time of manufacture (which includes importation) with the statement "This equipment contains PCB Capacitors" (40 CFR 761.40(d)).

H. Importing PCBs

EPA received two petitions for exemption to import PCBs.

Dow Corning Corp., Midland, MI 48640 (ME-31.1), requested an exemption to import samples of PCB-containing fluid taken from PCB transformers, which have been retrofilled with Dow Corning's silicone transformer fluid, for purposes of testing and analysis. Dow Corning wants to analyze this fluid for PCB concentration, moisture content, and contaminants as part of its customer service program. Dow Corning stated that it will ship samples in groups of five to ten individually packaged and hermetically sealed 5.0 ml vials. Dow Corning estimated that it will import two

groups of samples, with a total of approximately 600 ml of fluid containing no more than six percent PCBs, per month.

Honeywell, Inc., Waltham, MA 02154 (ME-51), requested an exemption to import PCB equipment, the facts of which are described in Unit V.G of this preamble.

1. Petition Granted

EPA is granting Dow Corning's exemption petition to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. The vials hold only a small volume of fluid containing PCBs, and granting an exemption would result in the importation of less than one lb. of PCBs a year. Furthermore, Dow Corning stated that it will ensure that the vials are hermetically sealed, properly labeled, and assembled in packages with sufficient absorbent material to ensure that PCBs will not be released into the environment if an accident should occur.

To ensure proper handling of samples, Dow Corning stated that it will train the people who ship these samples. Initially, Dow Corning said that it will limit the number of people authorized to ship these samples and will instruct them in the safe handling of material containing PCBs, the proper precautions to minimize the incidence of spills, and the proper clean-up of spills. Trained personnel with experience in handling hazardous substances, including PCBs, will conduct or directly supervise the analyses of the samples in Dow Corning's laboratories in the United States. Dow Corning stated that it requires its workers to wear eye protection, prepare samples in a vented hood, take samples through a septum into a syringe, and weigh substances in sealed bottles, all of which will minimize exposure to PCBs. Dow Corning stated that it periodically audits its laboratories to ensure that proper safety procedures are being followed.

Dow Corning claimed that the costs of denial are confidential, but would be large enough to terminate the overseas marketing of its non-PCB transformer fluid. Dow Corning stated that it investigated having these fluids tested abroad, but did not find a qualified laboratory that could perform the analyses at a cost that would allow its non-PCB transformer fluid to remain competitively priced with other transformer fluids.

The considerations involved with this petition of Dow Corning are similar to those of the petitions for the manufacture, processing, and distribution in commerce of PCBs for research and development as described in Unit V.E of this preamble. As stated in that unit, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to petitioners, such as Dow Corning, who import small quantities of PCBs for the continuation of important research activities. The importation of small quantities of PCB fluid for research and development under the safeguards provided in the Dow Corning petition will aid in the Agency's implementation of section 6(e) of TSCA.

When the one-year exemption granted to Dow Corning in this rule expires, EPA will automatically renew the exemption unless Dow Corning notifies EPA of any increase in the amount of PCBs to be imported or any change in the manner of import for PCBs. Any change in these factors may affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

b. Good faith efforts finding. EPA concluded that Dow Corning made good faith efforts to substitute non-PCBs for PCBs. Indeed, Dow Corning's petition for exemption to test the samples is an important part of its program to get customers to substitute Dow Corning's non-PCB transformer fluid for PCB transformer fluid. Granting an exemption will benefit society by promoting the use of a non-PCB transformer fluid as a substitute for PCBs, thereby reducing PCB contamination both within the United States and abroad. In addition, Dow Corning's success in marketing the non-PCB transformer fluid abroad may indirectly help it market such substitutes in the United States, as these

substitutes become more widely accepted and used. Thus, granting Dow Corning an exemption furthers EPA's goal of phasing out PCBs.

Therefore, EPA grants Dow Corning Corp., Midland, MI 48640 (ME-31) an exemption for one year to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis.

2. Petition Denied

EPA is denying Honeywell's exemption petition to import PCB equipment. In the proposed rule, EPA concluded that granting an exemption would result in an unreasonable risk of injury to health or the environment, since the added risk of exposure from importing PCBs into the United States outweighs the small costs of denial to Honeywell. In its exemption petition, Honeywell admitted that when the equipment is imported, Honeywell does not know whether the equipment contains PCB small capacitors and whether the capacitors are intact and nonleaking. Thus, EPA determined that there is a risk of exposure to humans and the environment to PCBs. Honeywell stated that it imports the non-functioning PCB equipment to its service facilities in the United States, because its overseas service facilities are currently unable to repair the equipment there and that it would cost $20,000 to set up proper overseas service facilities plus $10,000-$30,000 a year to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities. However, EPA determined that the costs of setting up and operating the proper overseas facilities to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities is not burdensome to Honeywell, whose 1982 sales revenues were $5.35 billion.

Honeywell did not submit any information on the issues of unreasonable risk and good faith efforts to substitute non-PCBs for PCBs, even after EPA specifically solicited comments in the proposed rule mailed to Honeywell. Therefore, for the reasons stated above, EPA is denying the petition of Honeywell, Inc., Waltham, MA 02154 (ME-51), to import PCB equipment.

I. Exporting PCBs

EPA received seven petitions for exemption to export PCBs. Three exemption petitions to export PCBs were originally submitted before the rule was proposed, and four new exemption petitions to export PCBs were received during the comment period on the proposed rule and accepted by EPA for consideration. EPA treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs within the United States, because EPA will have no control over the distribution, use, and disposal of PCBs once the PCBs have been exported.

In a policy statement published in the Federal Register of May 1, 1980 (45 FR 29115), EPA described specifically what petitioners who want to export PCBs must show to meet the statutory requirements of section 6(e)(3)(B) of TSCA: "EPA will not grant an exemption unless the nation to which export is destined has proper disposal facilities for ultimate disposal. EPA also will not grant an exemption for export for a use not authorized in the United States. In the context of exports, good faith efforts to find a substitute means the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor; and that the petitioner proves that it has expended substantial amounts of time and money searching for a substitute."

PolyScience Corp., Niles, IL 60648 (PDE-178), submitted its petition for exemption to process and export small quantities of PCBs in reference standard kits for use by analytical chemists. PolyScience stated that each kit contains 1.4 milligrams (mg) of PCBs, which are packaged in hermetically sealed 5.0 ml containers. PolyScience estimated that it will export approximately 14 mg of PCBs a year and estimated the costs of denial to be $945 to $1,875 a year.

During the comment period on the proposed rule, EPA received the following four new petitions for exemption to process and export PCBs for research purposes. EPA accepted each of these petitions for consideration, because the petitioner showed good cause for filing late, as required by EPA's policy statement published in the Federal Register of March 5, 1980 (45 FR 14247).

Chem Service, Inc., West Chester, PA 19380 (PDE-41), submitted a new petition for exemption to process and export small quantities of PCBs to foreign laboratories and chromatographic supply houses. The average package size ranges from 5.0 mg to 100 mg, and the PCBs are packaged in hermetically sealed 5.0 ml containers. Chem Service estimated that it will export a maximum of 250 mg of PCBs a year and estimated the costs of denial to be $4,000 to $6,000 a year.

Foxboro Co., North Haven, CT 06473 (PDE-21.1), submitted a new petition for exemption to process and export small quantities of PCBs for scientific experimentation of analysis. The PCBs are packaged in hermetically sealed containers no larger than 5.0 ml. Foxboro estimated that it will export less than two lbs. of PCBs a year and estimated that denial would cause a loss of as much as 25 percent of its business.

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1), submitted a new petition for exemption to process and export small quantities of pure PCB isomers to foreign research and development laboratories, academic institutions, and government organizations. Individual containers hold 0.2 mg to 50 mg of PCBs, and the PCBs are packaged in hermetically sealed 5.0 ml containers. ULTRA Scientific estimated that it will export amounts varying from several milligrams to as much as 100 grams a year and stated that denial of the petition would result in a "severe economic loss," although that loss was not quantified.

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.2), submitted a new petition for exemption to process and export "large" quantities of pure PCB isomers for use as standards in research to assess the biological effects of exposure of test animals and plants to a particular PCB isomer. ULTRA Scientific wants to consolidate orders for specific PCB isomers, each of which would be packaged in a single container no larger than 500 ml. ULTRA Scientific contended that EPA should permit the export of "large" quantities of PCBs because researchers need PCBs in sufficient quantities to conduct biological studies. The petitioner claimed that exposure to PCBs to humans and the environment would be minimized by the physical properties of the PCB isomers and the careful handling procedures typical of laboratory work. The petitioner stated that restricting the exemption to the export of PCBs in 5.0 ml containers would present a greater risk of exposure to humans and the environment, because more containers of PCBs would have to be shipped and handled by research scientists to obtain the quantities needed for their research. The petitioner also stated that denying an exemption would cause irreparable economic harm, although the extent of that harm was not quantified.

Honeywell, Inc., Waltham, MA 02154 (PDE-119), requested an exemption to export previously imported and repaired PCB equipment, the facts of which are described under Unit V.G of this preamble.

Traco Industrial Corp., New York, NY 10027 (PDE-276), submitted a petition for exemption to distribute in commerce PCB capacitors. Traco did not specifically request an exemption to export PCBs, but stated that "the capacitors are being sold to our overseas market that does not carry the restrictions of the U.S. market." EPA has treated this as a petition for exemption to export PCB capacitors.

1. Petitions Granted

EPA is granting the four exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption to process and export small quantities of PCBs for research and development would not present an unreasonable risk of injury to health or the environment. The petitioners will export only small amounts of PCBs (approximately two lbs.) for purposes of scientific research. The risk of exposure to PCBs is small because the PCBs are packaged in hermetically sealed containers, which minimize exposure during storage and shipment. Once the PCBs have been distributed, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, by the careful handling procedures typical of laboratory work, and by the fact that the containers must bear the PCB warning label. In addition, granting an exemption will avoid certain costs, which vary from petitioner to petitioner. Finally, granting an exemption will benefit society by allowing important scientific research to continue.

b. Good faith efforts finding. EPA concluded that the good faith efforts finding is not relevant here, because there are no substitutes for pure PCBs for use in scientific research. Pure PCBs are needed for this research, because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

Therefore, EPA grants the following petitioners an exemption for one year to process and export small quantities of PCBs for research and development:

Chem Service, Inc., West Chester, PA 19380 (PDE-41).

Foxboro Co., North Haven, CT (PDE-21.1.).

PolyScience Corp., Niles, IL 60648 (PDE-178).

ULTRA Scientific, Inc., Hope, RI 02931 (PDE-282.1).

In this rulemaking and in the recent rulemaking to authorize the use of small quantities of PCBs for research and development indefinitely, EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for an exemption to process and export small quntities of PCBs for research and development. Furthermore, EPA determined that the processing, export, and use of small quantities of PCBs for research and development will not present an unreasonable risk of injury to health or the environment, because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

In general, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to these petitioners, who will process and export small quantities of PCBs for research and development, since there are no substitutes for PCBs for the continuation of important research activities. In fact, PCBs will always be needed to ensure that the goal of section 6(e) of TSCA is being met. When the one-year exemption granted to these petitioners in this rule expires, EPA will automaticaly renew the exemption unless a petitioner notifies EPA of any increase in the amount of PCBs to be processed or exported or any change in the manner of processing or exporting PCBs. Any change in those factors might affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

2. Petitions Denied

EPA is denying the three exemption petitions listed below for the following reasons:

EPA is denying the exemption petition of ULTRA Scientific, Inc., Hope, RI 02931 (PDE-282.2), to process and export "large" quantities of PCBs for research purposes, because granting an exemption would result in an unreasonable risk of injury to health and the environment. EPA believes that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs in the event of a spill or leak, simply because more PCBs would be spilled or leaked from a 500 ml container than from a 5.0 ml container. Moreover, the petitioner did not estimate the total volume of PCBs to be processed and exported, nor did it estimate the reasonably ascertainable economic consequences of denial. In the absence of such information, EPA cannot determine that the benefits to society of granting an exemption outweigh the risks of injury. Finally, EPA believes that its decision to grant ULTRA Scientific an exemption to process and export small quantities of PCBs for research purposes will enable researchers to obtain the PCBs they need for research purposes and will mitigate any loss of business to ULTRA Scientific.

EPA is denying the exemption petition of Honeywell, Inc., (PDE-119), to export previously imported and repaired PCB equipment, because granting an exemption would result in an unreasonable risk of injury to health or the

environment. Honeywell submitted no information, even after EPA specificaly solicited comments on the proposed rule, to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of PCBs, nor did Honeywell estimate the reasonably ascertainable economic consequences of denial.

EPA is denying the exemption petition to Traco Industrial Corp., New York, NY 10027 (PDE-276), to distribute in commerce PCB capacitors. Traco's stated reason for wanting to export PCBs -- to avoid the restrictions of the PCB regulations -- is in direct opposition to the clear intent of TSCA, which is to minimize the addition of PCBs to the environment. Traco's only relief form the ban on exporting PCBs is to meet the requirements of section 6(e)(3)(B) of TSCA for obtaining an exemption. Traco did not produce any information for EPA to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment. Even after EPA specifically solicited comments in the proposed rule mailed to Traco, the petitioner submitted no information to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of PCBs, nor did it estimate the reasonably ascertainable economic consequences of denial. Finally Traco submitted no information to show that it made good faith efforts to substitute non-PCBs for PCBs. Accordingly, EPA is denying Traco's petition for exemption to export PCBs.

J. Actions Deferred Because of the Uncontrolled PCB Rule

EPA reviewed 49 petitions for exemption to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater PCBs. The activities for which each of these petitioners requests exemption is affected by the Uncontrolled PCB Rule published elsewhere in this issue of the Federal Register. In the Uncontrolled PCB Rule, EPA is setting new regulatory cutoffs for the inadvertent manufacture, processing, distribution in commerce, and use of certain PCBs.

Since the new regulatory cutoffs in the Uncontrolled PCB Rule may affect many of these exemption petitions, EPA is not taking action on them in this final rule. Instead, EPA is addressing these exemption petitions in a proposed rule related notice published elsewhere in this issue of the Federal Register. Interested persons should refer to that notice for important information about these exemption petitions.

V. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has his principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the Federal Register, as reflected in "DATES" in this notice. The effective date of this rule has, in turn, been calculated from the promulgation date.

VI. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS-66008.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this rulemaking. Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed, because these documents are exempt from Federal Register listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Used in Microscopy and Research and Development," Docket No. OPTS-62031, 48 FR 52402, November 17, 1983.

B. Federal Register Notices

(8) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(9) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(10) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions."

(11) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(12) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(13) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(14) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(15) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS-66008.

(16) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(17) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

C. Support Documents

(18) USEPA, OPTS, EED, Letter from Marigene H. Butler, Philadelphia Museum of Art, to Martin P. Halper, EPA, "Use of PCBs in Microscopy" (April 29, 1983).

(19) USEPA, OPTS, EED, Telephone Communication between Denise Keehner, EPA, and Martha Goodway, Smithsonian Institution, "Use of PCBs in Microscopy" (May 9, 1983).

(20) USEPA, OPTS, EED, "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984).

(21) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(22) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(23) USEPA, OPTS, HERD, "Response to Comments on Health Effects of PCBs" (August 19, 1982).

(24) USEPA, OPTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis" (April 1979).

D. Reports

(25) USEPA, ORD, EMSL, "A Method for Sampling and Analysis of Polychlorinated Biphenyls (PCBs) in Ambient Air" (August 1978). EPA-600/4-78-048.

E. Other

(26) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS-66001.

(27) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS-66002.

VII. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this rule is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Indeed, this rule allows the continued manufacture, processing, and distribution in commerce of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions.

Although this rule is not a major rule, EPA has prepared an Economic Impact Analysis using the guidance in the Executive Order to the extent possible. This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VIII. Regulatory Flexibility Act

Section 604 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 604, requires EPA to prepare a regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general notice of proposed rulemaking. A regulatory flexibility analysis described the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 604 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA estimated the cost of this rule on small businesses, whose petitions for exemption EPA is denying. For purposes of this analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with the sales figures used by EPA to define a small business in a final rule for reporting chlorinated terphenyls under section 8(a) of TSCA, which was published in the Federal Register of March 26, 1984 (49 FR 11181).

EPA is denying four petitions for exemption from small businesses that want to distribute in commerce PCB small capacitors and PCB equipment containing PCB small capacitors. None of these petitioners estimated the reasonably ascertainable economic consequences of denial. Based on other information submitted by petitioners, EPA estimated the costs of denying Traco Industrial Corp.'s petition to be $65,100 (roughly 1.1 percent of its 1981 sales revenues of $6 million) and the costs of denying Trans-State Corp.'s petition to be $37,200 (roughly 1.5 percent of its 1981 sales revenues of $2.5 million). None of the four petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA also is denying Traco Industrial Corp.'s petition for exemption to export PCB capacitors. Although Traco did not estimate the reasonably ascertainable economic consequences of denial, the costs would be no greater than the costs of denying its entire petition, or $65,100 (roughly 1.1 percent of its 1981 sales revenues of $6 million). Traco did not contend that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying 24 petitions for exemption, which were submitted on behalf of 36 small businesses, to process and distribute in commerce PCBs in servicing customers' transformers. None of these petitioners submitted information on the reasonably ascertainable economic consequences of denial of these petitions. Based on comments submitted by other petitioners during this rulemaking, EPA now estimates the upper bound costs of denial to be approximately $21,000 per company. None of these petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying eight petitions for exemption from small businesses that want to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. EPA was unable to estimate the total costs of denial, because the petitioners did not estimate the number of transformers to be bought and sold, the purchase price and resale value of such transformers, and the reasonably ascertainable economic costs of denial. In the proposed rule, EPA estimated the incremental costs of denial to be $90 to $240 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer. Based on comments submitted by other petitioners during this rulemaking, EPA now estimates the incremental costs of denial to be $160 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer. Given that the costs of replacing the similar sized PCB-contaminated transformer is approximately $1,600, and the costs of replacing a similar sized PCB transformer is approximately $13,000, the incremental costs amount to about 10 to 30 percent of replacement costs. Depending on the purchase price and resale value of used transformers, the additional costs resulting from denial might render a portion of this buying and selling activity unprofitable. None of these petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying Pathfinder Laboratories, Inc.'s petition for an exemption to manufacture, process, and distribute in commerce small quantities of PCBs for purposes of research and development. Pathfinder did not estimate the reasonably ascertainable economic consequences of denial, and EPA was unable to estimate the costs of denial. Pathfinder did not contend that denying its petition would result in a significant economic impact, even after EPA

specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying one portion of R.P. Cargille Laboratories, Inc.'s petition for an exemption to process and distribute in commerce PCBs for use as a precision calibration standard in microscopy. Cargille did not estimate the reasonably ascertainable economic consequences of denying this portion of its exemption petition, but conceded in its petition that the "economic consequences of denying the petition are quite small." EPA believes that denial will result in no direct costs, since the use has never been authorized, and that the indirect costs will be small, since adequate non-PCB substitutes exist for this use.

EPA is denying ULTRA Scientific, Inc.'s petition for exemption to process and export "large" quantities of PCBs for purposes of scientific research. ULTRA Scientific stated that the economic harm would be "irreparable," but did not quantify the costs. EPA believes that any costs of denial are mitigated or eliminated by the exemption which EPA is granting ULTRA Scientific to process and export small quantities of PCBs for research purposes.

In accordance with section 605(b) of the Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required and will not be prepared for this rulemaking.

EPA further notes that section 606 of the Act states that the requirements of section 604 do not alter in any manner standards otherwise applicable by law to agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations, 40 CFR Part 761. Section 6(e)(3)(B) of TSCA permits EPA to grant an exemption from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small business met the requirements set forth in TSCA.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA's original request to collect information for this rulemaking was approved by OMB and was assigned OMB Control Number 2000-0466. EPA's subsequent request to collect information for this rulemaking through December 31, 1984, was approved by OMB and was assigned OMB Control Number 2070-0021.

Regulations

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: June 27, 1984.

Alvin L. Alm,

Acting Administrator.

PART 761 -- [AMENDED]

Therefore, 40 CFR Part 761 is amended by adding a new Subpart E consisting at this time of § 761.80 to read as follows:

Subpart E -- Exemptions

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

(a) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB small capacitors for purposes of repair:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Air Conditioning Contractors of America, Washington, DC 20036 (PDE-7).

(3) Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE-26.2).

(4) B & B Motor & Control Corp., New York, NY 10012 (PDE-30).

(5) Complete-Reading Electric Co., Hillside, IL 60162 (PDE-48).

(6) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(7) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(8) Harry Alter Co., Chicago, IL 60609 (PDE-111).

(9) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.1).

(10) Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE-161).

(11) National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

(12) National Capacitor Corp., Garden Grove, CA 92641 (PDE-165).

(13) Service Supply Co., Phoenix, AZ 85013 (PDE-237).

(14) Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE-297).

(15) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(b) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB equipment containing PCB small capacitors:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Coleman Co., Inc., Wichita, KS 67201 (PDE-45.1).

(3) Donn Corp., Westlake, OH 44145 (PDE-63).

(4) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(5) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(6) Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE-93).

(7) Gould, Inc., Electric Moter Division, St. Louis, MO 63166 (PDE-103).

(8) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(9) King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE-139).

(10) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(11) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.3).

(12) National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

(13) Royalite Co., Flint, MI 48502 (PDE-231).

(14) Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE-246).

(15) Transco, Inc., West Columbia, SC 29169 (PDE-276.1).

(16) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(c) The Administrator grants the following petitioners an exemption for one year to process PCB small capacitors and PCB equipment containing PCB small capacitors into other equipment and to distribute in commerce that equipment:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Gould, Inc., Electric Moter Division, St. Louis, MO 63166 (PDE-103).

(3) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(4) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(5) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(d) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid for purposes of servicing customers' transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) T & R Electric Supply Co., Inc., Colman, SD 57017 (PDE-265).

(4) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(e) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(f) The Administrator grants the following petitioners an exemption for one year to manufacture small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

(2) Foxboro Co., North Haven, CT 06473 (ME-6).

(3) ULTRA Scientific, Inc., Hope, RI 02831 (ME-99.1).

(g) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (PDE-38.1).

(2) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(3) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(4) PolyScience Corp., Niles, IL 60648 (PDE-178).

(5) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(h) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes:

(1) McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., Chicago, IL 60616 (PDE-149).

(2) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(i) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy):

(1) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(2) [Reserved]

(j) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for use as an optical liquid:

(1) R.P Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(2) [Reserved]

(k) The Administrator grants the following petitioners an exemption for one year to distribute in commerce previously imported and repaired PCB equipment containing PCB small capacitors:

(1) Honeywell, Inc., Waltham, MA 02154 (PDE-119).

(2) [Reserved]

(l) The Administrator grants the following petitioners an exemption for one year to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis:

(1) Dow Corning Corp., Midland, MI 48460 (ME-31.1).

(2) [Reserved]

(m) The Administrator grants the following petitioners an exemption for one year to process and export small quantities of PCBs for research and development:

(1) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(2) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(3) PolyScience Corp., Niles, IL 60648 (PDE-178).

(4) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(n) The one-year exemption granted to petitioners in paragraphs (f), (g), (l) and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, imported, processed, distributed in commerce, or exported or any change in the manner of manufacture, processing, distribution in commerce, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comments, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

[FR Doc. 84-17902 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

Dates

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of the Toxic Substances Control Act (TSCA) at 1:00 p.m. Eastern Daylight Time on July 24, 1984. This rule shall become effective on August 23, 1984.

Contacts

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065), in Washington, D.C. (554-1404), Outside the USA: (Operator-202-554-1404).

FEDERAL REGISTER